



Under Secretary of Commerce for Intellectual Property and
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Paper Number 24

In re application of
James M. Mori et al.
Serial No. 08/726,613
Filed: October 7, 1996
For: DYED PHOTORESISTS AND METHODS AND ARTICLES
OF MANUFACTURE COMPRISING

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: DECISION ON
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: PETITION
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This is a response to the REQUEST FOR WITHDRAWAL OF ERRONEOUS NOTICE OF ABANDONMENT, filed November 5, 2001. The request asks that the abandonment, as set forth in the Notice of Abandonment of October 23, 2001, for failure to respond to the Office letter, mailed March 15, 2001 be withdrawn. The requester asserts that the Notice of Abandonment is improper since the Office letter of March 15, 2001 was a non-final Office Action that was properly responded to by the filing of a response thereto on August 15, 2001.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the requestor's evidence and the USPTO file history indicates that the request has merit. A review of the file history indicates that the Office letter mailed March 15, 2001 was a non-final office action. The applicant properly responded to the Office letter of March 15, 2001 by filing an AMENDMENT on August 15, 2001. In response to the AMENDMENT, filed August 15, 2001, the Examiner prepared an Advisory Action that was mailed on September 13, 2001. The preparation of an Advisory Action by the Examiner was improper because an Advisory Action is only available to respond to responses filed after final rejection, which was not the case in the instant application. In response to the AMENDMENT, filed August 15, 2001, the Examiner should have prepared an office action responding to all points raised by the AMENDMENT rather than preparing and Advisory Action and as such it is considered that applicant's request has merit.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt entry and consideration of the AMENDMENT filed August 15, 2001.

The Petition is GRANTED.

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